

Burlington Planning Commission

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Vacant, Youth Member*



Burlington Planning Commission Minutes

Tuesday, January 12, 2016 - 6:30 pm,

PC Present: L. Buffinton, H. Roen, J. Wallace-Brodeur, Y. Bradley, A. Montroll, B. Baker, E Lee
Staff: D White, M Tuttle, E. Tillotson, S Gustin

I. Public Forum

Y Bradley opened the public forum at 6:35 pm.

John Alden, representing Rick Bove: Bove is owner of a property on George Street. This property is under appeal from a Development Review Board decision. Alden presented a four page request to the Planning Commission to move the zoning boundary line in relation to the Bove's property on the Pearl Street corridor. Alden stated that the area is not as vibrant as it should be and requested that the Planning Commission evaluate this request.

Y Bradley: Which Planning Commission committee should receive this request?

Commissioners referred the request to its Ordinance Committee to review and return to the Commission with a recommendation.

II. Report of the Chair

Y Bradley reported that the Commission has been preoccupied with form based code and planBTV South End discussions, and that he appreciates the Commission's diligence in the proceedings. Y Bradley also reported that there is a long list of additional items that will be coming before the Commission.

Finally, Y Bradley reported that he, A Montroll, and D White met with the Mayor and Lee Einsweiller, a consultant for form-based codes and that it should be a great public discussion regarding the code on Wednesday evening.

III. Report of the Director

D White reported that the last few weeks had been very busy with mall and form-based code meetings. The Burlington Town Center redevelopment presentation on January 5 was a very positive evening. Due to lack of space for all who wanted to attend, there will be another open house on January 21, 5:00 pm in Contois Auditorium. This week has included many form-based code meetings. The next two mornings are an open Q & A with area planners and design professionals.

A Montroll: When will the mall project come to the Planning Commission?

D White: After the City and the owner have established a Memorandum of Understanding.

A Montroll: What changes are proposed?

D White: Building height and encroachment into the view corridors are the biggest concerns.

J Wallace-Brodeur: Are there categories of public concerns about the project?

D White: As this point, height, including concerns about uphill residents' views being blocked by a large structure, and the Pine Street Arcade. There have been questions about whether the City could do more to support a vehicular connection at Pine. D White and the directors of Public Works and CEDO spent

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discussing the possibilities and will ask the Technical Team to continue to consider this challenging and complex issue.

M Tuttle: Concerns have also been shared about how the Mall will manage the retail sector in the interim and how implementation of the affordable housing requirements will occur.

L Buffinton: When Pine Street is being considered, will we look at all possibilities?

D White: Yes.

IV. Agenda

No changes.

V. Health Impact Assessment of planBTV South End

Amy Malinowski, VT Department of Health: A Malinowski provided a presentation about planning for community health and the Health Impact Assessment (HIA) tool.

She shared that in 2015, the department conducted an assessment of the South End in conjunction with the planBTV South End process. The HIA examines planning, the built environment, and behavior/lifestyle in a systematic process. planBTV South End was the third HIA that the local office has conducted. For Burlington, improving physical activity and mental health were determined to be the most important aspects for health. Street connectivity, the opportunity for recreation and affordable housing were the components with the strongest interest expressed by the public.

L Buffinton: Are recommendations about increased connectivity incorporated into planBTV South End?

D White: Yes. Important for the Commission to be thinking broadly about we make plans and how that impacts the health of the community when we're building new places.

A Malinowski: One aspect is to include health-supporting language in the master plan which at present is not explicitly stated. Full report of recommendations on the planBTV South End Health Impact Assessment have been submitted to the Planning Department and on the online tool.

D White: Affordable housing impacts mental health in terms of the stress associated with ensuring a safe and affordable place to live.

A Malinowski: Recreation recommendations, the concept of blue space, (Lake Champlain) is a great resource. Community services could be enhanced to allow people to be able to enjoy the lake.

M Tuttle: The report and specific feedback has been provided on the website where all feedback on the plan have been posted.

A Malinowski: While this tool does not need to be used for every study or plan, this is a great use of the state health department. Please contact in the future.

Y Bradley: Thanks for great presentation.

VI. Proposed CDO Amendment: 15 Year Statute of Limitations

M Tuttle: You received a memo on this item in the revised agenda this morning.

Kim Sturtevant, City Attorney: Would we like to have a background discussion on this proposed amendment?

B Baker: I assume that Marc Weiner who is a title attorney is here for this discussion?

M Weiner: Affirmative

K Sturtevant: This is the third discussion of this issue. The draft was initiated by the Commission in an attempt to address the interpretation of statute of limitations, relative to continuing violations. These changes apply to the non-conformity section. Does not eliminate non-conforming uses or change enforcement of Bianchi-controlled violations. Language is an attempt to establish a bright-line for the 15 year statute of limitations.

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L Buffinton: In section b, of the proposed language, says "throughout" 15 years, which seems problematic due to implied continuity.

D White: That is the intent. It refers to the continued activity associated with the violation.

L Buffinton: Implies continued awareness on the part of the City. Also, section c, the statement about conflicting records, seems to be problematic, in the example of zoning records conflicting with a tax record. And finally, concerned with section d, if a historic building burns down, are we saying that it can't be rebuilt the way that it was?

E Lee: Does a complaint about a property initiate the 15 year clock? Property for which neighbors have submitted a complaint as an example.

Commissioners discussed whether or not a specific example should be discussed to help the Commission understand the discussion; Commissioners permitted E Lee to share materials brought to the meeting.

E Lee: Provides an example of a property for which the site plan permits five cars, with photos of 14 cars. Neighbors have filed with Planning & Zoning in 2012, but no response. Does this 2012 letter begin the 15 year clock for something that is illegal to be permitted?

D White: As an example, if there is no zoning permit on file, but 20 years ago there was a building permit issued or a minimum housing inspection that ensures that this "thing" that was built was safe and routinely inspected. That is the kind of documentation that the City would use to determine whether or not the 15 years had been met. Additionally, the clock doesn't start when the City learns about it, but rather, look back into historical records to see when the "thing" started.

Y Bradley: We need to address E Lee's question about whether a complaint does/does not start the clock.

D White: Need to provide clarifying language about what constitutes notification of a violation.

B Baker: Official submissions should matter.

E Lee: What about situations in which someone doesn't get a permit for something and a neighbor complains but the City never acts on it?

B Baker: Need a legal standard for what constitutes awareness.

J Wallace-Brodeur: There is a difference between a letter of complaint and an actual notice of violation. Just because a neighbor complains about a violation, doesn't mean there's actually a violation. Filing a letter of complaint is questionable in terms of how it is used in this case.

H Roen: There is agreement that we are talking about a zoning violation as notification, not a letter of complaint.

E Lee: How is a decision made to determine whether or not the violation has taken place?

B Baker: The point is that Planning & Zoning and Code Enforcement have to evaluate whether or not they act on a complaint.

M Weiner: Issue is if we know there's a problem and we haven't done anything about it for 15 years, that's the point when the homeowner needs relief from potential enforcement of a violation. 15 years is a long time to not do anything.

B Baker: It is easy to write a violation memo. This memo and associated fines exerts enormous pressure on a property owner to settle a problem. City should be obligated to write that letter.

D White: Yes, the City should respond either as a notice of a violation or that there's no violation. We are not making these things legal; we're just not enforcing them. They do not enjoy the benefit of being non-conforming, which is that it is legal. These situations do not get to rebuild if it is lost, where non-conforming uses are entitled to.

K Sturtevant: They enjoy provisions to be expanded, to count towards a new use of property, to rebuild.

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B Baker: Can we agree that complaint submitted to the City should not be deemed a city record?

A Montroll: Unless the City responds to a complaint to confirm it as a violation.

Y Bradley: In reality we're talking about the principle of what does the city know and do? There are a tremendous amount of properties which are non-conforming. 15 year status goes hand-in-hand with the Clean Hands issue. There are problems with the City's records. Title's need to be certified and this seems too murky for that to happen.

B Baker: When the Bianchi ruling first came out it was difficult to have access to zoning records; it is somewhat easier now. One thing that is concerning is that advisory opinions have been relied on for years.

M Weiner: Problems with records are another reason to allow relief to the owner after 15 years; not appropriate for innocent property owner to be penalized for poor records. Some owners want more than an advisory opinion, should ask for a formal determination.

D White: Every question that gets asked of the Planning & Zoning Office takes the form of an opinion or interpretation. When we're talking about these issues, should be applying for a decision. This gives the office a mechanism to answer questions about these issues, by giving a determination.

B Baker: But the Department has been issuing advisory opinions and leading people to believe that they're determinations. People haven't been led to believe that they need to follow a process for getting a determination. This is the problem.

S Gustin, Planner: For a determination depending on where you look, you find different answers. The records are inconsistent. When someone comes in to request a determination, there is notice to their neighbors. Advisory opinions can be issued at any time.

B Baker: Should include a disclaimer that if want a formal determination, need to request one.

D White: This all speaks to why we need to outline this process.

L Buffinton: Confusion about the difference between written opinion and a determination. Has an opinion or determination ever been reversed or do they stand?

D White: A determination ought to stand on its own.

K Sturtevant: They're made based on the information provided and available.

A Montroll: But if there's no notification about an opinion, and there's an oversight in information provided, there's no mechanism for a neighbor or other party to weigh in.

Y Bradley: We are talking about two different things. Concern is in the transfer of a property and you have something in writing that says one thing, but find out that it's not. Saying it's not a determination and doesn't have weight is not acceptable. Will need to continue this discussion; however, not willing to live with section c in the proposed language. Planning & Zoning should not trump Assessor's Office just because there isn't a zoning permit.

J Wallace-Brodeur: We have to pick one source as the authority. We may disagree with how this is written, but we do need to say which document will provide the foundation to resolve the issue.

D White: The assessor's record is based on actual inspections; it is what exists, not what may have been permitted to exist. The conflicting nature of these records could be the proof of a violation.

A Montroll: Section c is simply saying there is saying there is a conflict between two sources of city records. We need to answer the question about how do we resolve the conflict.

B Baker: The principle of the Bianchi ruling is that the City does know, but does not act. Therefore, needs to be resolved in favor of the property owner. If the City has known about it consistently for 15 years and has not acted on it, then they're not able to enforce it.

K Sturtevant: We need to know whether there's direction for the City to revise this language. E Lee provided language about notifications and a response-back trigger.

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D White: Points of discussion include: resolution of conflict in City records and that complaints that have not been responded to do not constitute knowledge on the part of the City.

Y Bradley: This discussion will continue at our next meeting. This will be the first agenda item on the next meeting.

D White: Two public hearings at next meeting so this will follow.

VII. Proposed CEDO Amendment: Low Impact Design (LID)

Deferred to next meeting

VIII. planBTV South End Master Plan Draft Update/Revisions

Deferred to next meeting.

IX. Committee Reports

No reports.

Commissioner Items

No reports.

X. Minutes/Communications

No action.

XI. Adjourn

On a motion by A Montroll, seconded by L Buffinton, the Commission unanimously adjourned at 8:07 pm.



Y Bradley, Chair

Signed: January 27, 2016



E Tillotson, recording secretary